



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

In the Matter of

PROPOSED AMENDED CLEANUP AND ABATEMENT ORDER FOR RIALTO-AREA PERCHLORATE CONTAMINATION

San Bernardino County

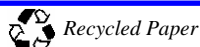
The Hearing Officer, Mr. Walter Pettit, designated in this matter by the California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board) intends to hold a public hearing on **March 23, 2007, at LOCATION TBD**, to take testimony and to consider the adoption of a proposed amended Cleanup and Abatement Order to address perchlorate contamination in the vicinity of the City of Rialto, California. The proposed amended Cleanup and Abatement Order names Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker (U.S.), Inc. (collectively the "Emhart Entities"), Goodrich Corporation, and Pyro Spectaculars, Inc. as dischargers responsible for the contamination and for compliance with the Order.

BRIEF BACKGROUND

On February 28, 2005, the Regional Water Board Executive Officer issued a Cleanup and Abatement Order concerning perchlorate discharges at facilities located on a 160-acre site in Rialto. The Order named Emhart Industries, Inc., and Black & Decker (U.S.), Inc., as responsible parties. The Executive Officer issued an amended Order on December 2, 2005, that named Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker (U.S.), Inc. (collectively the "Emhart Entities"). The amended Order did not, however, identify specific deadlines for investigative and remedial tasks. Rather than taking action on this issue himself, the Executive Officer chose to present the task schedule to the Regional Water Board for consideration.

Prior to convening a hearing, however, the Emhart Entities raised objections to the fitness of the Regional Water Board to adjudicate and render a decision on the amended Order. After considering alternatives, the Regional Water Board settled upon the appointment of a Hearing Officer to consider the amended Order. In a resolution adopted on October 13, 2006, (Resolution No. R8-2006-0079) the Regional Water Board appointed Mr. Walt Pettit to serve in this capacity. Several petitions of the Resolution were filed with the State Water Board, but no orders, either to impose a stay

California Environmental Protection Agency



of the Resolution or for other purposes, have been issued. Accordingly, the Resolution remains in effect and the Hearing Officer remains authorized to proceed.

REVIEW AND COMMENT ON DOCUMENTS

The Hearing Officer will accept written comments¹ relevant to the CAO during the review period of **January 29, 2007 - February 14, 2007**. Comments shall be submitted to Kevin Heinemann either at the following mailing address:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, California, 92501-3348
ATTN: Kevin Heinemann

via facsimile to (951) 781-6288, or via email to kheinemann@waterboards.ca.gov.

Written comments by designated parties shall be submitted using the Email Service List and must be received² by all persons on the Email Service List by the below deadline.³

Regardless of which transmittal method is used, **all written comments must be received no later than February 14, 2007, at 5:00 p.m.** Written comments received after that date will not be accepted, except at the discretion of the Hearing Officer. Untimely written comments will not be accepted or incorporated into the administrative record if doing so would prejudice the Advocacy Staff, or any other designated party. The Hearing Officer may choose to modify this rule upon a showing of severe hardship (California Code of Regulations, Title 23, Sections 648.1 and 648.4).

Written comments will be accepted on all materials related to the CAO. Numerous written comments relevant to the CAO were previously received by the Regional Water Board. **Written comments need not be newly drafted, but may consist of a resubmittal of prior comments to the Regional Water Board.**

DOCUMENT REVIEW AND REPRODUCTION

The proposed CAO and other key documents are available for review on the Regional Water Board's website (<http://www.waterboards.ca.gov/northcoast/>).

¹ For the purpose of this notice, "comment" means any information regarding the CAO including testimony, other evidence, or legal argument, presented in either oral or written form.

² "Received" means that the item has actually arrived at its destination.

³ The Email Service List consists of the following persons:

a. Walt Pettit (wpettit@waterboards.ca.gov), Erik Spiess (espiess@waterboards.ca.gov) and Kevin Heinemann (kheinemann@waterboards.ca.gov) on behalf of the Hearing Officer and Advisory Staff, [remainder TBD]



Those materials together with other documents associated with the CAO are also available for inspection and photocopying at the Regional Water Board office at the above address during business hours. Appointments are recommended for document review and can be made by calling (951) 782-4130.

HEARING SCHEDULE

The Advocacy Staff will prepare a package consisting of the proposed CAO revised in response to submittals by other designated parties and interested persons received by the 5:00 p.m. **February 14, 2007** deadline. The Advocacy Staff will circulate this package to the Email Service List on **February 26, 2007**. The Hearing Officer and Advisory Staff will prepare and circulate a Tentative Decision and Order on **March 16, 2007**.

Barring unforeseen delays, an evidentiary hearing on the CAO is scheduled to occur on **March 23, 2007**. The Hearing Officer may decide to issue the CAO at the conclusion of the hearing or may decide to take the matter under submission and issue a Final Decision and Order by **April 4, 2007**, or as soon thereafter as practicable.

HEARING PARTICIPATION

The hearing will be conducted according to the procedures be found in California Code of Regulations, title 23, section 647 et seq. These regulations may be obtained online at http://www.waterboards.ca.gov/water_laws/. Hearings before the Hearing Officer are not conducted pursuant to Government Code section 11500 et seq.

Participants at the hearings (excluding the Hearing Officer and the Advisory Staff are either “parties” or “interested persons.” All hearing participants are expected to honor applicable time limits. The following describes the procedures governing the participation by these two groups.

1. Designated Parties

Designated parties may present evidentiary testimony at the evidentiary hearing, and are subject to cross-examination. Parties may also cross-examine other parties’ witnesses. Because of the complexity of their participation, parties receive more time to address the Hearing Officer and cross-examine witnesses.

The following participants are designated as parties for proceedings on the CAO:

1. Advocacy Staff
2. Goodrich Corporation
3. Pyro Spectaculars, Inc.
4. Emhart Entities (collectively Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker [U.S.] Inc.)
5. City of Rialto
6. County of San Bernardino

Only designated parties will have these rights: to call and examine witnesses; to cross-examine opposing witnesses; to impeach any witness; and to rebut the evidence against him or her. Designated parties will receive special time allotments for this hearing participation to be established in the hearing procedure.

Hearing participation by designated parties will be limited to the content of comments previously submitted in writing. **Presentations at the hearing(s), made either orally or in visual aids, may summarize or explain written comments received by the above deadline or late written comments accepted by the Hearing Officer, but shall not add new comments.**

To avoid hearsay objections, each party should arrange for any witness who has submitted written testimony to be present at the hearing so they may testify in person and/or affirm their testimony under oath. (California Code of Regulations, Title 23, Section 648.4(d).) If a person who has submitted written testimony is not present at the hearing, their written testimony may constitute hearsay evidence. Government Code section 11513 provides that hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible in a civil action notwithstanding the objection. A hearsay objection is timely if made before the close of the hearing.

Further details about hearing participation by designated parties will be contained in the hearing procedure.

A. Witnesses and Objections

A designated party may present direct testimony from only those witnesses properly disclosed on that party's witness list. To enable the designated parties to prepare for cross-examination, the designated parties are directed to provide a list of witnesses who will be present to reiterate written direct testimony (including those witnesses who will simply affirm written testimony). Testimony from witnesses omitted from a party's witness list may, upon timely objection to the Hearing Officer, be ruled out of order.



Witnesses who will provide only rebuttal testimony need not be disclosed on the witness list.

(1) Witness Lists. Each party's witness list shall state: (1) the name of each witness planned to attend; (2) the subject(s) their testimony will address; (3) a list of materials in the record containing the information their testimony will present; and (4) their qualifications if they will present expert testimony. The curriculum vitae for each expert witness shall be attached to the witness list.

Each party's Witness List is to be distributed via the Email Distribution List no later than **February 20, 2007**.

(2) Objections to Witnesses. Each party having an objection to a witness appearing on another party's list shall make it in writing in advance of the hearing. Objections not so made in writing may be rejected by the Hearing Officer. All parties' objections to witnesses are due to be distributed via the Email Distribution List on All Designated Parties besides Advocacy Staff on **February 26, 2007**.

B. Visual Aids

Designated parties may wish to use handouts, computer presentations, or other visual aids. All visual aids must be submitted in advance so that they are received by Kevin Heinemann and all other designated parties no later than **March 21, 2007**, as explained below:

(1) Handouts. Designated parties wishing to use handouts must provide them in advance as follows:

- a) **Five paper copies** of each set of handouts must be provided to Kevin Heinemann to ensure that the Hearing Officer and members of the Advisory Staff receive one.
- b) Each set of handouts shall also be sent to the designated parties, preferably via email using the Email Service List.

(2) Computer Presentations. A laptop computer and digital projector will be available at the hearing for computer presentations (e.g., PowerPoint). A copy of the presentation (either in native format or a commonly available alternative) shall be provided to the designated parties, preferably via email using the Email Service List. If the presentation is too large to email, designated parties may be sent a paper copy (via fax or mail). To enable the presentation to be uploaded onto the laptop, Kevin Heinemann must receive a copy in native format. If too large to email, a compact disk (CD-ROM) or digital video disk (DVD) is also acceptable. Regardless of which method

is chosen a copy of the presentation must be received by Kevin Heinemann and the designated parties by the above deadline.

(3) Other Visual Aids. If a designated party desires to present material visually at the hearing via another method (e.g., slides, overhead projector, videotape), please contact Kevin Heinemann at (951) 782-4384 (kheinemann@waterboards.ca.gov) **on or before March 16, 2007.**

2. Interested Persons

All others besides the above-listed designated parties may participate in the hearing as interested persons. Each interested person will receive a maximum of **3 minutes** to present a non-evidentiary policy statement that will be heard first, prior to the presentations by the designated parties. Interested persons are not subject to cross-examination and may not cross-examine other parties. Other procedures for participation by interested persons will be contained in the forthcoming Hearing Procedure.

Interested persons may use handouts as a part of their presentations, but must provide **five paper copies** of each handout to Kevin Heinemann so that those copies are received no later than **March 21, 2007**. Interested persons wishing to use another form of visual aid besides handouts must contact please contact Kevin Heinemann (kheinemann@waterboards.ca.gov) or (951) 782-4384 **no later than March 16, 2007**.

For further information, please contact Advisory Staff Counsel Erik Spiess (916) 341-5167.

Walter Pettit
Hearing Officer

Draft – January 10, 2007

File: CAO NOPH-Final Draft.doc

